

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1298 OF 2025

John Chukwudi Nnaekwe

.. Applicant

Versus

Union Of India and Anr.

.. Respondents

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- Ms. Ashwinii Achari a/w. Mr. Anish Pereira, Advocates i/by Mr. Taraq Sayed, for Applicant.
- Ms. Sangeeta Yadav, SPP for Respondent No.1.
- Mr. Hitendra J. Dedhia, APP for Respondent No.2.

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 23, 2025

P.C.:

1. Heard Ms. Achari, learned Advocate for Applicant and Ms. Yadav, learned SPP for Respondent No.1 and Mr. Dedhia, learned APP for Respondent No.2.

2. This is an Application under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 seeking Bail in connection with F. No.DRI/MZU/C/INT-92/2020 registered with Directorate of Revenue Intelligence for offences punishable under Sections 21, 23, 27A, 28, 29 and 30 read with Section 8(c) of the Narcotic and Psychotropic Substances Act, 1985 (for short '**NDPS Act**'). Applicant was arrested on 28.11.2020.

3. Applicant in the present case is a foreign national. First Information Report is filed on 21.11.2020. There are four Accused

persons in the present crime. Applicant is arraigned as Accused No.3.

4. Applicant is apprehended solely on the basis of statement of Accused No.2 who is a also foreign national which was recorded by prosecution under Section 67 of the NDPS Act.

5. According to prosecution, role attributed to Applicant is that he is complicit in trafficking of the alleged contraband which has been recovered from Accused Nos.1 and 2 in the present case.

6. *Prima facie* reading of the prosecution case shows that the contraband parcel was booked in name of Accused No.1 which was received by Accused No.2 but when Accused No.2 was apprehended and arrested in the enquiry conducted under Section 67 of the NDPS Act, he disclosed that he was acting in tandem with another Nigerian national namely the present Applicant and they both were part of the same syndicate.

7. Ms. Yadav, learned SPP for Respondent No.1 has persuaded me to consider the Affidavit-in-Reply dated 22.04.2025 filed by Mr. Kumar Ambrish, Deputy Director of Directorate of Revenue Intelligence, Mumbai Zonal Unit appended at page No.493 of the Application to contend that statement of Accused No.2 was recorded under Section 67 of the NDPS Act wherein he has admitted that he was sent by a Nigerian National called “Ugochi” to collect the alleged contraband from Accused No.1. The said “Ugochi” incidentally has not

been arrested and is absconding.

8. According to the prosecution, the said “Ugochi” was dealing with the alleged contraband. However in the further statement which has been recorded, Accused No.2 has recorded that he was acting in tandem with Accused No.3 as they were part of the same syndicate. Apart from above, there is no other incriminating material save and except the statement recorded under Section 67 of the NDPS Act for indicting Applicant.

9. Ms. Yadav, learned SPP has drawn my attention to paragraph (VIII) on page No.497 to contend that Applicant was instrumental in arranging the delivery of the consignment and according to prosecution case he also transferred amount of Rs.30,000/- to Accused No.1 and the said payment was paid online for procuring the alleged contraband.

10. *Prima facie*, it is seen that consignment was booked in a third party’s name but case against Applicant is solely based on witness statement recorded, and the co-accused statement at this stage.

11. Applicant has suffered incarceration for the past 4 years 4 months 26 days pending trial. There is no sign on the horizon that trial will even commence in the near foreseeable future. I am informed that charge has been framed in February – 2025. Considering the fact that case of prosecution against Applicant is solely based on statement

recorded under Section 67 of the NDPS Act, case of Applicant before me is *prima facie* covered by the decision in the case of ***Tofan Singh Vs. State of Tamil Nadu***¹. Needless to state that complicity of Applicant can be proved by prosecution in trial.

12. That apart, facet of long incarceration pending trial is another reason as to why this Court is inclined to consider the Application for releasing Applicant on bail since right to bail is a right of Applicant emanating from the right to speedy justice enshrined under Article 21 of the Constitution of India.

13. In view of my above *prima facie* observations and findings, Bail Application stands allowed subject to the following conditions:-

- (i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs.50,000/- with one or two sureties in the like amount;
- (ii) Before his actual release from jail, Applicant shall furnish his address where he proposes to reside after his release from jail to the concerned Police Station and also to the trial Court;
- (iii) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;
- (iv) Applicant shall attend the trial Court on first Tuesday of

¹ (2021) 4 SCC 1.

every month between 11.00 a.m. and 1.00 p.m. to mark his presence. If the first Tuesday of the said month falls on a holiday and / or non Court working day, the Applicant shall mark presence on the next working day;

- (v) Applicant shall co-operate with the conduct of trial and attend the trial Court on all dates unless specifically exempted and will not take any unnecessary adjournments, if he does so, it will entitle the prosecution to apply for cancellation of this order;
- (vi) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (vii) Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner;
- (viii) In case of any infraction of the above conditions and / or two consecutive defaults in marking his attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail; and
- (ix) The concerned prosecuting Agency shall immediately communicate this order of grant of bail to the concerned Registration Officer appointed under Rule 3

of the Registration of Foreigners Rules, 1992 within the meaning of the Foreigners Act, 1946. This condition is added in view of the decision of the Supreme Court in the case of *Frank Vitus v. Narcotics Control Bureau & Ors.*².

14. It is clarified that the observations made in this order are limited for the purpose of granting Bail only. They shall not be construed as observations on merit. The trial shall be adjudicated on the strength of evidence led by parties and strictly on its own merits being uninfluenced with any of the *prima facie* observations made herein above in this order.

15. Bail Application No.1298 of 2025 is allowed and disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

2 Criminal Appeal No.2814-2815 of 2024 decided on 06.01.2025.